

Attorney Docket No.: **DEX-0087**
Inventors: **Recipon et al.**
Serial No.: **09/705,500**
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REMARKS

Claims 1-5 and 12 are pending in the instant application. Claims 1-5 have been amended. Support for the amendments is provided in the specification at page 4, lines 17-18, and page 7, lines 27-28. Thus, no new matter is added by these amendments and entry is respectfully requested.

The rejection of claims 1, 2 and 12 under 35 U.S.C. § 102(e) as being anticipated by Olsen et al. (Publication No. U.S. 2002/0042372, priority date October 27, 1999) and the rejection of claims 1-5 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Olsen et al. (Publication No. U.S. 2002/0042372, priority date October 27, 1999) in view of Sobol et al. (U.S. Patent 5,543,296) have been maintained. Thus, in an earnest effort to advance the prosecution of this case, Applicants are submitting herewith a Declaration by Dr. Roberto Macina under 37 C.F.R. 1.131 with evidence showing that the invention of the instant application was conceived and reduced to practice in the United States by the inventors prior to October 27, 1999. As shown by Dr. Macina's Declaration and attached laboratory notebook pages 0034-124, 0034-168 and 0049-048, QPCR experiments demonstrating expression of Lng108 and its utility as

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a diagnostic marker for cancer were conducted prior to October 27, 1999. See paragraphs 5 and 6 of Dr. Macina's Declaration. As discussed in paragraph 4 of Dr. Macina's Declarations, these experiments are also described in the instant application as well the provisional patent application from which the instant application claims priority.

Thus, the patent application of Olsen et al. was not filed prior to the invention herein and is not a valid prior art reference with respect to the instant invention under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a).

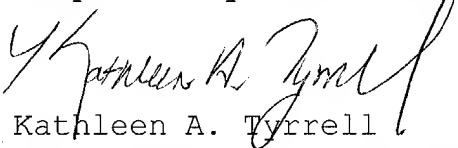
Further, the teachings of Sobol et al. alone are insufficient to render obvious the instant claimed invention.

Withdrawal of the rejections under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) is therefore respectfully requested.

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Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,

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